

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04CV10632MEL

MARY B. SMITH

Plaintiff

v.

DAVID C. NICHOLSON, Trustee of
D.J.J. Realty Trust;
DOMINIC M. SAWICKI, Trustee of
Dominic M. Sawicki Nominee Trust,
and
CAROL ANN WHITNEY and
GLENN WHITNEY,
Defendants

ANSWER AND JURY CLAIM
OF DEFENDANT DOMINIC M. SAWICKI,
TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE TRUST

1. The Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 except that Defendant denies that Plaintiff has any right to seek punitive damages or attorneys fees.
2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2, except that Defendant denies that the amount in controversy exceeds \$800,000.
3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.

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4. Defendant admits that he was and is a resident of Belmont and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4.

AS TO COUNT ONE:

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5, except that Defendant denies that he is either jointly or severally liable for the maintenance or repair of the place where Plaintiff allegedly fell.
6. Defendant denies the allegations of Paragraph 6.
7. Defendant denies the allegations of Paragraph 7.
8. Defendant denies the allegations of Paragraph 8.

AS TO COUNT TWO:

9. Defendant incorporates by reference his responses to the allegations of Paragraphs 5 through 7.
10. Defendant denies the allegations of Paragraph 10.
11. Defendant denies the allegations of Paragraph 11.

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AS TO COUNT THREE:

12. Defendant incorporates by reference his responses to the allegations of Paragraphs 5 through 7.
13. Defendant denies the allegations of Paragraph 13.

First Defense:

14. The injury and damage complained of by the Plaintiff were caused in whole or in part by her negligence which exceeded any negligence on the part of the Defendants.

Second Defense:

15. The injury and damage complained of by the Defendant were caused in whole or in part by the conduct of a person or entity for which the Defendant is not legally responsible.

Third Defense:

16. To the extent that the Plaintiff entered upon any land owned by the Defendant Dominic M. Sawicki, Trustee, she was a trespasser.

Fourth Defense:

17. The Plaintiff's claims are barred in whole or in part to the extent that she unreasonably failed to mitigate her damages.

Fifth Defense:

18. The Plaintiff has waived and/or is estopped from asserting the claims set forth in the Complaint in whole or in part.

Sixth Defense:

19. The Complaint fails to state any claim upon which relief can be granted in the form of punitive damages and the assertion of such a claim is a violation of Fed. R. Civ. P. Rule 11.

Seventh Defense:

20. The Complaint fails to state any claim upon which relief may be granted in the form of attorneys fees and the assertion of such a claim is a violation of Fed. R. Civ. P. Rule 11.

Eighth Defense:

21. The Plaintiff has failed to plead the citizenship of the parties in any proper way, and has consequently failed to establish the jurisdiction of this court.

Ninth Defense:

22. To the extent that the Plaintiff seeks any award of interest at the rate set forth in Mass. G. L. c. 231 §6B, said rate is unconstitutional and violates both the Massachusetts Declaration of Rights and the United States Constitution.

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DEFENDANT CLAIMS A TRIAL BY JURY.

DOMINIC M. SAWICKI
By his Attorneys,
CURLEY & CURLEY P.C.

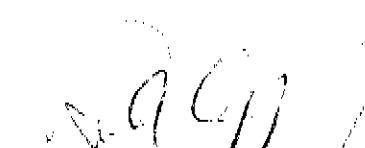

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CERTIFICATE OF SERVICE

I, Robert A. Curley, Jr., Esq. hereby certify that I served a true and correct copy of the foregoing pleading by mailing a copy postage prepaid to the following counsel of record:

Albert J. Smith, Jr., Esq.
706 Bedford Street
Stamford CT 06901

Dated: 5/12/04


Robert A. Curley, Jr., Esq.
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